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In re Application of :  
SHERRY et al. :  
Application No.: 10/553,652 :  
PCT No.: PCT/AU2004/000486 :  
Int. Filing Date: 14 April 2004 :  
Priority Date: 14 April 2003 :  
Attorney Docket No.: 5000-053079 :  
For: SUPPORT ARRANGEMENT FOR USE :  
IN SUPPORTING A BONE DURING A :  
SURGICAL OPERATION :

DECISION ON PETITION

This decision is issued in response to applicants' "Petition under 37 CFR 1.181(a) to Withdraw Holding of Abandonment" filed 23 June 2009. No petition fee is required.

**BACKGROUND**

On 14 April 2004, applicants filed international application PCT/AU2004/000486 which claimed a priority date of 14 April 2003. Pursuant to 37 CFR 1.495, the deadline for payment of the basic national fee was to expire on 14 October 2005.

On 14 October 2005, applicants filed a Transmittal Letter for entry into the national stage accompanied, *inter alia*, by: the requisite basic national fee; a copy of the international application; and an application data sheet.

On 28 June 2006, the United States Designated Office (DO/EO/US) mailed a Notification Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that a signed oath/declaration of the inventors in compliance with 37 CFR 1.497(a) and (b) together with a surcharge payment were required. The notification set a two-month time limit in which to respond.

On 20 May 2009, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a complete response to the Notification of Missing

Requirements mailed 28 June 2006 within the time period set therein.

On 23 June 2009, applicants filed the present petition which was accompanied, among other things, a copy of the declaration and a post card receipt dated 23 August 2006.

### DISCUSSION

Applicants state in their present petition that a declaration was received at the United States Patent and Trademark Office on 23 August 2006. A review of the present application reveals that the declaration is not located therein. Section 503 of the Manual of Patent Examining Procedure under the heading "RETURN POSTCARD" states, in part:

"A postcard receipt which itemizes and properly identifies the papers which are being filed serves as prima facie evidence of receipt in the PTO of all the items listed thereon on the date stamped thereon by the PTO."

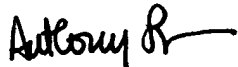
Here, applicants have provided a copy of their date-stamped filing receipt. The receipt identifies the application by the application number, name of applicant, and attorney docket number. The receipt itemizes, among other things, a declaration. The receipt is stamped "Rec'd PCT/PTO 23 AUG 2006" across its face and is sufficient to indicate that the above item was in fact received in the Office on 23 August 2006.

### CONCLUSION

Applicants' petition under 37 CFR 1.181 is GRANTED.

In view of the declaration filed 23 August 2006, the Notification of Abandonment (Form PCT/DO/EO/909) dated 20 May 2009 is hereby VACATED.

The application is being returned to the United States Designated/Elected Office for further processing in accordance with this decision.



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